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Attorney Grievance Commission of Maryland v. Mooney: **Indefinite Suspension is Warranted Where an Attorney Fails to Provide Competent Representation**

By J. Kristen Moore

The Court of Appeals of Maryland held that an indefinite suspension, with the right to reapply for admission to the practice of law ninety days from the effective date of the suspension, rather than a public reprimand, was appropriate where an attorney failed to provide competent representation. *Attorney Grievance Comm'n of Md. v. Mooney*, 359 Md. 56, 753 A.2d 17 (2000). The court held this type of sanction was warranted where an attorney failed to: (1) appear at clients' trials; (2) keep clients informed; (3) file a motion on behalf of a client; (4) ensure ethical compliance by employees; (5) subpoena witnesses and obtain medical records on behalf of a client; and (6) where the attorney made a false statement to a juvenile client's parent.

This disciplinary action arose out of the complaints of four clients of Thomas Mooney ("Mooney"): (1) Ms. Greenhill, whose complaint stated that Mooney failed to take or return any of her numerous calls; that he did not appear as counsel at her trial; that he failed to provide an explanation as to his actions; that he failed to return any of her calls regarding a refund; and that Mooney's receptionist falsely told her that Mooney no longer worked at that office; (2) Ms. Johnson, whose

complaint stated that after hiring Mooney to represent her son, Mooney agreed, but failed to file a reverse waiver, return her calls, and visit her son in jail; (3) Mr. Postell, whose complaint stated that he was called by an unknown member of Mooney's staff and told he did not have to appear for trial; that no one from Mooney's office appeared for his trial; and that as a result, a bench warrant was issued for his arrest; and (4) Ms. Cunningham, whose complaint stated that she provided Mooney with a list of witnesses and told him of the existence of medical records that would corroborate her story; that she made repeated, unsuccessful, attempts to contact Mooney; that Mooney failed to appear for her trial, but sent an associate who had not been informed of the witnesses or medical records; and that she was convicted as a result of Mooney's conduct.

Bar Counsel, on behalf of the Attorney Grievance Commission ("AGC"), and at the discretion of the Review Board, filed a petition with the Court of Appeals of Maryland for disciplinary action against Mooney, based on Maryland Rule 16-709(a). Thereafter, the court of appeals referred the matter to the Circuit Court for Montgomery County, pursuant to Maryland Rules 16-709(b) and 16-711(a), to

conduct an evidentiary hearing and make findings of fact and conclusions of law. Mooney filed extensive exceptions with the court of appeals. The court affirmed the above-stated findings of fact and certain parts of the trial court's holding.

The court, reviewing the trial court's findings using a clear and convincing standard of review, examined the various violations of the professional rules of conduct. *Id.* at 73, 753 A.2d at 26. First reviewing MRCP 1.1 (Competence), the court noted that Maryland precedent holds that it is unacceptable for an attorney to appear in court for a trial or other proceeding unprepared. *Id.* at 74, 753 A.2d at 26. (citing *Attorney Grievance Comm'n v. Ficker*, 349 Md. 13, 39-40, 706 A.2d 1045, 1057-58 (1998)). Furthermore, an attorney who is not present for a court appearance, absent sufficient explanation, is guilty of violating MRPC 1.1. *Id.* The court held that Mooney's failure to appear for Greenhill's trial was incompetent representation in violation of MRPC 1.1, thereby sustaining the trial court. *Id.* at 75, 753 A.2d at 27. Additionally, the court of appeals agreed that Mooney's failure to file the reverse waiver in the Johnson case, his failure to

appear for trial in the Postell case, and his incompetent representation in the Cunningham case also constituted a violation of MRPC 1.1. *Id.* at 84, 88, 93, 753 A.2d 32, 34, 37.

The court also sustained the trial court's holding that Mooney violated MRPC 1.3, for his failure to appear at trial and MRPC 1.4, for the failure to appear, as well as his subsequent failure to respond to attempted communications by Greenhill. *Id.* MRPC 1.3 requires an attorney to act with reasonable diligence and promptness in his representation of a client, while MRPC 1.4 mandates a lawyer to keep his client adequately informed about the status of the case, as well as to comply with the client's requests for information. *Id.* The court further held that Mooney's actions in the Johnson, Postell and Cunningham cases violated both MRPC 1.3 and 1.4. *Id.* at 84-85, 87, 88-89, 93-94, 753 A.2d at 32, 34, 37.

The court also examined MRPC 5.1, which requires a partner in a law firm to make reasonable efforts to ensure the firm has in effect, measures giving reasonable assurance that all lawyers in the firm conform to the rules of professional conduct. *Id.* at 94-95, 753 A.2d at 37. Sustaining the trial court's holding that Mooney violated MRPC 5.1 in the Cunningham case, the court concluded that the system set up by Mooney to provide files to an associate was not reasonably designed to ensure that the associate received the files in a timely manner, or to ensure that an

associate even knew she had been assigned to a given case. *Id.* at 95, 753 A.2d at 37. Additionally, in the Postell case, the court sustained the findings as to MRPC 5.3, which requires a lawyer having direct supervisory authority over a non-lawyer, to make reasonable efforts to ensure that the non-lawyer's conduct is compatible with the professional obligations of the lawyer. *Id.* at 90, 753 A.2d at 35. The court of appeals found it was obvious that these reasonable efforts had not been taken, because Postell was given incorrect advice by a Mooney employee, which resulted in a two-day incarceration. *Id.*

In addition, the court agreed that Mooney violated MRCP 8.4(a), which considers it professional misconduct to violate the Rules of Professional Conduct, in both the Postell and Cunningham cases. *Id.* at 92, 95, 753 A.2d at 36, 38. The court also examined MRPC 8.4(d), which prohibits a lawyer from engaging in conduct that is prejudicial to the administration of justice. *Id.* at 81, 87, 753 A.2d at 30, 33. The court sustained the holding that Mooney was in violation in the Greenhill case, for his failure to appear at trial, and in the Johnson case for his acceptance of the case, subsequent lack of representation, and misrepresentations to the client's mother. *Id.*

However, in both the Greenhill and Postell cases, the court overturned the finding that Mooney violated MRPC 8.1, which prohibits a lawyer from knowingly making a false statement of material

fact in connection with a disciplinary matter. *Id.* at 78, 753 A.2d at 28. Whereas the trial court found that Mooney made misrepresentations to the bar investigator about the assignment of these cases to his associate, the court of appeals held this ruling was not supported by clear and convincing evidence. *Id.* The court also rejected the trial court's ruling in the Greenhill, Johnson, and Postell cases, as to MRPC 8.4(c), which states that it is professional misconduct for an attorney to "engage in conduct involving dishonesty, fraud, deceit, or misrepresentation." *Id.* at 81-82, 87-88, 92, 753 A.2d at 30, 33-34, 36. Again, the court found no clear and convincing evidence that Mooney intended to mislead the bar investigator. *Id.* The court also stated that conduct before a hearing court at an attorney disciplinary hearing could not be the basis for a separate finding of a violation of MRPC 8.4 in the same proceeding on charges already filed. *Id.* at 81-82, 753 A.2d at 30.

In determining the proper sanction, the court noted, "[t]he purpose of disciplinary proceedings against an attorney is to protect the public rather than to punish the erring attorney." *Id.* at 96, 753 A.2d at 38 (quoting *Attorney Grievance Comm'n v. Hamby*, 322 Md. 606, 611, 589 A.2d 53, 56 (1991)). In prior cases, the court has ordered an indefinite suspension because the representation was marked by serious neglect and inattention. *Id.* at 96-97, 753 A.2d at 38-39. Although it has allowed a right to apply for reinstatement, the court has also

ordered suspended attorneys, who have been reinstated, to be subject to the supervision of a monitor. See *Attorney Grievance Comm'n v. David*, 331 Md. 317, 323, 628 A.2d 178, 181 (1993), *Attorney Grievance Comm'n v. Brown*, 353 Md. 271, 296, 725 A.2d 1069, 1081 (1999), *Attorney Grievance Comm'n v. Brugh*, 353 Md. 475, 727 A.2d 913 (1999). Based on its findings here, the court of appeals ordered that Mooney be indefinitely suspended with the right to reapply for admission to the practice of law ninety days from the effective date of his suspension. 359 Md. at 98, 753 A.2d at 39. It also ordered Mooney to engage, at his expense, a monitor acceptable to Bar Counsel upon reinstatement. *Id.*

Upon being sworn in and granted the privilege to practice law in the State of Maryland, one takes an oath that demands strict adherence. A promise is made to obey the ethical rules of professional conduct and to maintain the highest standards in the practice of law. We, as a society, consider attorneys to be experts in their field. These officers of the court are expected to conduct themselves in a highly professional manner, and to safeguard the trust that has been placed in them by their clients. As a result, the courts take violations of the Maryland Rules of Professional Conduct very seriously. The public is entitled to be protected from those attorneys who ignore, or otherwise neglect to maintain the standards of conduct they have sworn to uphold. To that end, the courts will take any and all steps necessary to

see that the public is afforded that protection.